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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,
DEFENDERS OF WILDLIFE, SIERRA
CLUB, NATURAL RESOURCES
DEFENSE COUNCIL, NATIONAL PARKS
CONSERVATION ASSOCIATION,
WILDEARTH GUARDIANS, and THE
HUMANE SOCIETY OF THE UNITED
STATES,

Plaintiffs,

v.

DEB HAALAND, U.S. Secretary of the
Interior, U.S. FISH AND WILDLIFE
SERVICE, GINA RAIMONDO, U.S.
Secretary of Commerce, and NATIONAL
MARINE FISHERIES SERVICE,

Defendants,

and

STATE OF ALABAMA, *et al.*,

Defendant-Intervenors.

Case No. 4:19-cv-05206-JST

Related Cases: No. 4:19-cv-06013-JST
No. 4:19-cv-06812-JST

**PLAINTIFFS' JOINT UNOPPOSED
MOTION TO EXPEDITE HEARING ON
MOTION FOR REMAND**

INTRODUCTION

Plaintiffs in the three related cases challenging the 2019 Endangered Species Act (“ESA”) Regulations—*Center for Biological Diversity et al. v. Haaland*, No. 19-cv-05206, *California et al. v. Haaland*, No. 19-cv-06013, and *Animal Legal Defense Fund v. Haaland*, No. 19-cv-06812—respectfully move this Court to expedite the hearing on Federal Defendants’ Motion for Voluntary Remand without Vacatur (ECF 146 in *CBD*; ECF 165 in *California*; ECF 109 in *ALDF*).¹ The remand motion is currently set for hearing on March 10, 2022. Plaintiffs ask the Court to schedule hearing in January 2022. If no January hearing is possible, Plaintiffs ask the Court to rule on the remand motion in January without oral argument pursuant to Civil Local Rule 7-1(b).

Counsel for Federal Defendants has stated that they do not oppose this motion to expedite the hearing, and ask that Federal Defendants’ reply (on the remand motion) be due on January 7, 2022. Counsel for Defendant-Intervenors has stated that they do not oppose the motion to expedite the hearing on the remand motion or to submit that motion on the papers.

DISCUSSION

The Court is familiar with the background facts in this litigation. Pertinent to this motion to expedite, after the Court denied Federal Defendants’ motion for an additional stay on October 7, 2021, the Court entered a stipulated scheduling order to recommence summary judgment briefing. In accordance with the schedule, on December 10, 2021, Federal Defendants filed a Motion for Voluntary Remand and Response to Plaintiffs’ Motions for Summary Judgment (ECF 146 in *CBD*; ECF 165 in *California*; ECF 109 in *ALDF*). Pursuant to Civil Local Rule 7-3(a), responses to the remand motion are due December 27, 2021, with reply brief due January 3, 2022. The hearing on the remand motion is not scheduled until March 10, 2022.

In the remand motion, Federal Defendants informed the Court and the parties for the first time that they have ceased work on any revisions to the challenged 2019 ESA regulations and will not recommence that work until the Court either grants their motion for remand without

¹ Plaintiffs are submitting the same motion in each of the three related cases.

1 vacatur or denies that motion and rules on the summary judgment motions. *See* Third Frazer
2 Decl. ¶¶ 12–14; *id.* ¶ 14 (“should the Court remand the rules to the Services as requested, FWS
3 would again make the rulemaking revisions a high priority”) (ECF 146-1 in *CBD*, ECF 165-1 in
4 *California*, ECF 109-1 in *ALDF*); Fourth Rauch Decl. ¶¶ 10–11 (ECF 146-2 in *CBD*, ECF 165-2
5 in *California*, ECF 109-2 in *ALDF*).

6 The remaining dates in the court-ordered summary judgment briefing schedule, however,
7 come after briefing on the remand motion is complete: Defendant-Intervenors’ combined
8 responses and summary judgment cross-motions are due January 7, 2022; Plaintiffs’ combined
9 replies and oppositions are due January 28, 2022; Federal Defendants’ reply is due February 25,
10 2022; and Defendant-Intervenors’ replies are due March 10, 2022 (the same day on which
11 Federal Defendants’ motion for remand is currently scheduled for hearing). Because the Court’s
12 decision on the remand motion could moot the parties’ summary judgment motions, Defendant-
13 Intervenors moved on December 15, 2021, to suspend the remainder of the summary judgment
14 briefing in all three cases until the Court rules on the remand motion (ECF 147 in *CBD*; ECF 168
15 in *California*; ECF 110 in *ALDF*).

16 Plaintiffs understand that a ruling on Federal Defendants’ remand motion could moot the
17 summary judgment motions and make further briefing unnecessary. However, Plaintiffs could
18 not stipulate to a suspension of summary judgment briefing because it could further delay the
19 Federal Defendants’ work on revised ESA regulations. If the briefing schedule was suspended
20 and the Court denied the remand motion after the March 10, 2022 hearing, summary judgment
21 briefing would then re-start, adding at least another three months before the summary judgment
22 briefing was completed and ready for court hearing and decision in the summer/fall of 2022.

23 During all this time, the Federal Defendants, according to the declarations submitted with
24 their remand motion, would not be working on revised ESA regulations, despite their admitted
25 “substantial and legitimate” concerns about the challenged 2019 Rules. Plaintiffs cannot agree to
26 a suspension of briefing that could keep the invalid regulations in force for months longer.

27 Counsel for Plaintiffs have reviewed the Court’s online calendar, and it shows no
28 Thursday (civil motion day) available for hearing until March 3, 2022. Due to the remand

1 motion briefing schedule overriding the summary judgment schedule, Plaintiffs respectfully ask
 2 the Court to set an expedited hearing on Federal Defendants' remand motion in January 2022, as
 3 soon as possible after briefing is completed on January 3, 2022. If no January 2022 hearing is
 4 possible, Plaintiffs ask the Court to rule on the remand motion in January 2022 without oral
 5 argument pursuant to Civil Local Rule 7-1(b).²

6 Respectfully submitted this 16th day of December, 2021.

7 s/ Kristen L. Boyles

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² If the Court grants this motion to expedite, Plaintiffs will not oppose Defendant-Intervenors' motion to suspend summary judgment briefing.

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